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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEANINE PICRAUX

Appeal 2008-005424
Application 10/029,733
Technology Center 2400

Decided: December 7, 2009

Before JEAN R. HOMERE, JAY P. LUCAS, and STEPHEN C. SIU,
Administrative Patent Judges.

SIU, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-7, 9-18, and 20-24. Claims 8 and 19 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

The Invention

The disclosed invention relates generally to transmitting data transactions and additional information between nodes (Spec. 3).

Independent claim 1 is illustrative:

1. A method for transmitting information from a second node to a first node, comprising the steps of:
 - establishing a communication link between the first node and the second node;
 - the communication link having multiple channels for transmitting multiple data transactions;
 - allowing one or more data transactions transmitted on the communication link between the first node and the second node;
 - identifying a data stream of a data transaction being transmitted from the second node to the first node;
 - stalling the transaction at any time during the transaction;
 - saving a status of the transaction at the time the transaction is stalled;
 - inserting the information into the identified data stream without regards to a boundary of the transaction; and
 - based on the saved status, resuming the transaction, thereby transmitting the information from the second node via the data stream to the first node;
 - wherein the information is not part of the data transaction when the data transaction starts from the second node to the first node.

The References

The Examiner relies upon the following references as evidence in support of the rejections:

Grivna	US 5,949,799	Sep. 07, 1999
Keller	US 6,748,442 B1	Jun. 08, 2004

The Rejections

1. The Examiner rejects claims 9-11, 20-22, and 24 under 35 U.S.C. § 102(b) as being anticipated by Grivna.
2. The Examiner rejects claims 1-7, 12-18, and 23 under 35 U.S.C. § 103(a) as being unpatentable over Grivna and Keller.

ISSUE 1

Appellant asserts that Grivna fails to disclose “not counting the packet as a part of the data transaction” as recited in claims 9, 20, and 24 (App. Br. 11). Appellant also asserts that Grivna fails to disclose and “specifically teaches away from the claimed limitations” (App. Br. 12) of “information that ‘is not part of the data transaction’” (*id.*).

Did Appellant demonstrate that the Examiner erred in finding that Grivna discloses a node counting the packet as not part of the data transaction or inserting information that is not part of the data transaction?

ISSUE 2

Appellant asserts that Grivna fails to disclose “that information is inserted without regard to boundary” (App. Br. 12).

Did Appellants demonstrate that the Examiner erred in finding that Grivna discloses inserting information into a data stream without regards to a boundary of the transaction?

ISSUE 3

Appellant asserts that “Grivna is completely lacking in any motivation or suggestion to reasonably combine the cited references” (App. Br. 14).

Did Appellants demonstrate that the Examiner erred in finding that it would have been obvious to one of ordinary skill in the art to have combined the Grivna and Keller references?

ISSUE 4

Appellant asserts that “*Grivna* does not disclose that a transaction is stalled” (Reply Br. 3).

Did Appellants demonstrate that the Examiner erred in finding that Grivna discloses stalling a transaction?

FINDINGS OF FACT

The following Findings of Facts (FF) are shown by a preponderance of the evidence.

1. Grivna discloses “packet framing characters [that] typically frame the data field . . . to indicate the beginning and/or end of the data packet” (col. 3, ll. 19-21).
2. Grivna discloses an “end-of packet (EOP) located directly after the data field” (col. 3, ll. 23-24).
3. Grivna discloses that “the EOP is transmitted to inform the receiver that there are no more data characters in the data field” (col. 3, ll. 24-25).
4. Grivna discloses “transmitting the data packet . . . and embedding the commands) . . . into the data packet” (col. 5, ll. 57-59).
5. Grivna discloses that “[w]hen a command . . . such as an ACK is required, transmission of the packet characters . . . is suspended” (col. 5, ll. 61-63).
6. Grivna discloses that “command . . . is inserted into the data stream and transmitted without interruption” (col. 5, ll. 64-65).
7. Grivna discloses that “[a]fter the command . . . is transmitted, transmission of the packet characters . . . is resumed” (col. 6, ll. 1-2) and that “[b]y stalling the transmission of packet characters, no data is lost” (col. 6, ll. 2-3).
8. Grivna discloses “transfer of data between two locations” (Abstract).
9. Keller discloses a “plurality of bytes . . . transferred over the data lines from a first to a second node on the communication link” (Abstract).

10. Keller discloses transmitting “multiple logical I/O streams” (col. 6, l. 27).

PRINCIPLES OF LAW

35 U.S.C. § 102

In rejecting claims under 35 U.S.C. § 102, “[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation.” *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375 (Fed. Cir. 2005) (citation omitted).

“Anticipation of a patent claim requires a finding that the claim at issue ‘reads on’ a prior art reference.” *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed. Cir. 1999) (citation omitted). “In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.” (*Id.*) (citation omitted).

Obviousness

The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966).

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”
KSR Int’l Co. v. Teleflex, Inc., 550 U.S. 398, 416 (2007).

ANALYSIS

Issue 1

Based on Appellant’s arguments in the Appeal Brief, we will decide the appeal of claims 1-7, 9-18, and 20-24 with respect to issue 1 on the basis of independent claims 1, 9, 12, 20, 23, and 24 alone. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Regarding the limitation recited in claims 9, 20, and 24 that a packet is not counted as part of the data transaction, we agree with the Examiner that Grivna discloses this feature. In Grivna, data (i.e., a “packet”) is not counted as part of a data transaction since “packet characters” (i.e., a “data transaction”) are transmitted but a command “is inserted into the data stream” when required (FF 4-7). If the command (i.e., “packet”) is inserted into the data stream, we find, based on Grivna’s teachings, that the command is not counted as a part of the data stream prior to insertion. Clearly, if the command was counted as already a part of the data stream, there would be no need to then insert the command into the data stream since the command would already be present in the data stream.

In addition, Grivna discloses that the end of a data packet is marked by an “EOP” and that the inserted command (e.g., an “ACK”, Fig. 5) is

located after the EOP (i.e., outside of the data packet, see Fig. 5) (FF 1-3). As such, the inserted command (i.e., the inserted “packet”) is positioned outside of the data stream (i.e., beyond the end of the packet (EOP)), and is therefore considered not a part of the data stream.

Our observations apply equally to the limitation recited in claims 1, 12, and 23 of information that is not part of the data transaction. As described above, the command of Grivna is not part of the data stream but is inserted into a data stream. Since the command must be inserted into the data stream, the command (i.e., “information”) is not already part of the data stream (i.e., “data transaction”). This fact is highlighted in Fig. 5 of Grivna in which the inserted command is positioned outside of the data packet (i.e., beyond the “EOP”).

For at least the aforementioned reasons, we conclude that Appellant has not sustained the requisite burden on appeal in providing arguments or evidence persuasive of error in the Examiner’s rejection of independent claims 1, 9, 12, 20, 23, and 24, or of claims 2-7, 10, 11, 13-18, 21, and 22, which fall therewith with respect to issue 1.

Issue 2

Based on Appellant’s arguments in the Appeal Brief, we will decide the appeal of claims 1-7, 12-18, and 23 with respect to issue 2 on the basis of claim 1 alone. *See* 37 C.F.R. § 41.37(c)(1)(vii).

We agree with the Examiner that Grivna discloses or suggests inserting information without regard to boundary since, as the Examiner

points out, data (or a “command”) in Grivna is inserted into a data stream without regard to a transaction boundary (i.e., a boundary delineated by data in the data stream). Grivna discloses that a command is inserted into a data stream when required and without interruption (FF 4-6). If the command is inserted whenever it is required and without interruption, the insertion of the command cannot be subject to boundaries of the transaction. If the data insertion of Grivna were subject to transaction boundaries, the insertion could not be performed until the end of the transaction and could not be performed either “without interruption” or “when required” as explicitly disclosed by Grivna. Hence, we cannot agree with Appellant’s contention that Grivna supposedly fails to disclose this feature.

For at least the aforementioned reasons, we conclude that Appellant has not sustained the requisite burden on appeal in providing arguments or evidence persuasive of error in the Examiner’s rejection of claim 1, or of claims 2-7, 12-18, and 23, which depend therewith with respect to issue 2.

Issue 3

Based on Appellant’s arguments in the Appeal Brief, we will decide the appeal of claims 1-7, 12-18, and 23 with respect to issue 3 on the basis of claim 1 alone. *See* 37 C.F.R. § 41.37(c)(1)(vii).

As described above, Appellant argues that one of ordinary skill in the art would not have been motivated to combine the Grivna and Keller references because, according to Appellant, there is no motivation or suggestion in the Grivna reference to do so. However, our reviewing court

has held that whether a patent claim would have been obvious is based on “the objective reach of the claim” and is not “confined by a formalistic conception of the words teaching, suggestion, and motivation, or by overemphasis on the importance of published articles and the explicit content of issued patents.” *KSR*, 550 U.S. at 419. As such, we do not find persuasive Appellant’s argument that Grivna supposedly fails to provide an explicit “motivation” for one of ordinary skill in the art to have combined the Grivna and Keller references. In determining whether a patent claim would have been obvious, “neither the particular motivation nor the avowed purpose of the patentee controls” (*id.*).

Both Grivna and Keller disclose transmitting data between two locations (FF 8-9). Keller also discloses that the data transmitted between two locations (i.e., from a first node to a second node) may further include multiple logical I/O streams (FF 10). Combining the known method of transmitting data between two locations (Grivna and/or Keller) with the known method of transmitting multiple data streams between the two locations (Keller) would have merely entailed rearranging and combining known elements, each performing a known function, to achieve a predictable result of successful data transmission in which the transmitted data may include multiple data streams. “[W]hen a patent ‘simply arranges old elements with each performing the same function it had been known to perform’ and yields no more than one would expect from such an arrangement, the combination is obvious.” *KSR*, 550 U.S. at 417 (citing *Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282 (1976)).

For at least the aforementioned reasons, we conclude that Appellant has not sustained the requisite burden on appeal in providing arguments or evidence persuasive of error in the Examiner's rejection of claim 1, or of claims 2-7, 12-18, and 23, which depend therewith with respect to issue 3.

Issue 4

Based on Appellant's arguments in the Appeal Brief, we will decide the appeal of claims 1-7, 9-18, and 20-24 with respect to issue 4 on the basis of claim 1 alone. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Appellant argues that Grivna fails to disclose that a transaction is stalled. Because Appellant presents this argument for the first time in the Reply Brief, the argument is untimely. Nevertheless, we agree with the Examiner that Grivna discloses stalling a transaction. Grivna discloses that when a command is required, the transmission of packet characters is suspended and that no data is lost "by stalling" the transmission of characters (FF 5). While Appellant argues that the data in Grivna "are disclosed to be transmitted" (Reply Br. 3), Grivna also explicitly discloses that the data transaction is "suspended" (col. 5, l. 63) and that "stalling the transmission" of data prevents data loss (col. 6, ll. 2-3). In view of Grivna's explicit disclosure of stalling the data transaction, we disagree with Appellant's contention that Grivna supposedly fails to disclose this feature.

Appellant argues that "*Grivna* describes stalling of a packet character and not stalling of a transaction" (Reply Br. 3). In the absence of an explicit definition of a transaction in the Specification, we construe the term broadly

but reasonably to include any exchange or transfer of, in this case, data. Since transmission of “packet characters” in Grivna includes the exchange or transfer of the data, we find that transmission of the packet characters in Grivna constitute a data transaction. Appellant has failed to demonstrate a distinction between a data transaction and transmission of data packet characters. Since Grivna stalls (or suspends) the transmission of data packet characters, the transmission of data packet characters constitutes a data transaction, and Appellant has failed to demonstrate any differences between a data transaction and transmission of data packet characters, we find that Grivna discloses stalling (or suspending) a data transaction.

For at least the aforementioned reasons, we conclude that Appellant has not sustained the requisite burden on appeal in providing arguments or evidence persuasive of error in the Examiner’s rejection of claim 1, or of claims 2-7, 9-18, and 20-24, which fall therewith with respect to issue 4.

CONCLUSIONS OF LAW

Based on the findings of facts and analysis above, we conclude that Appellant has failed to demonstrate that the Examiner erred in:

1. finding that Grivna discloses a node counting the packet as not part of the data transaction or inserting information that is not part of the data transaction (issue 1),
2. finding that Grivna discloses inserting information into a data stream without regards to a boundary of the transaction (issue 2),

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3. finding that it would have been obvious to one of ordinary skill in the art to have combined the Grivna and Keller references (issue 3), and
4. finding that Grivna discloses stalling a transaction (issue 4).

DECISION

We affirm the Examiner's decisions rejecting claims 1-7, 12-18, and 23 under 35 U.S.C. § 102(b) and claims 9-11, 20-22, and 24 under 35 U.S.C. § 103.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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